



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding E Y PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDC, MNR, MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on November 23, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, at the service address noted on the Application. The Agent for the Landlord cited a tracking number that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

The Agent for the Landlord stated that when the Landlord filed this Application for Dispute Resolution the Landlord submitted 11 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord was advised that I did not have that evidence in my possession at the time of the hearing and she stated that she would resubmit the evidence to the Residential Tenancy Branch. I received that evidence on June 21, 2016.

The Agent for the Landlord stated that on November 23, 2015 the evidence the Landlord submitted with the Application were sent to the Tenant, via registered mail, at the service address noted on the Application. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

## Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on October 01, 2014;
- the tenancy was for a fixed term, the fixed term of which ended on September 30, 2015;
- the Tenant vacated the rental unit on August 07, 2015;
- the Tenant agreed to pay monthly rent of \$870.00 by the first day of each month;
- the Tenant paid a security deposit of \$345.00 and a key deposit of \$25.00; and
- the Tenant provided the service address as her forwarding address on August 08, 2015.

The Landlord is seeking compensation, in the amount of \$870.00, in rent for August of 2015. The Agent for the Landlord stated that on August 05, 2015 the Tenant informed the Landlord of her intent to vacate the rental unit and that no rent was paid for August of 2015.

The Landlord is seeking compensation, in the amount of \$150.00, for liquidated damages. The Landlord submitted a copy of the tenancy agreement which declares the Tenant must pay \$300.00 in liquidated damages if the Tenant ends the tenancy prior to the end of the fixed term of the tenancy agreement. The Agent for the Landlord stated on August 08, 2015 she and the Tenant mutually agreed that the Tenant would only have to pay \$150.00 in liquidated damages.

The Landlord is seeking compensation, in the amount of \$264.40, for cleaning the carpet and the drapes in rental unit. The Agent for the Landlord stated the carpets and drapes required cleaning at the end of the tenancy. The Landlord submitted invoices to show this expense was incurred. The Landlord submitted a copy of a condition inspection that appears to have been signed by the Tenant on August 08, 2015, which indicates the carpets and drapes required cleaning.

The Landlord is seeking compensation, in the amount of \$50.00, because the Tenant did not return her laundry card. The Landlord submitted a copy of a document in which the Tenant agreed to pay \$50.00 if she did not return this card. The Agent for the Landlord stated the card was not returned.

## Analysis

On the basis of the undisputed evidence I find that the fixed term of this tenancy ended on September 30, 2015 and that the Tenant prematurely ended this tenancy when she vacated the rental unit on August 07, 2015.

On the basis of the undisputed evidence I find that the Tenant agreed to pay monthly rent of \$870.00 by the first day of each month and that she has not paid any of the rent that was due on August 01, 2015. As the Tenant was occupying the rental unit on

August 01, 2015 I find that she remains obligated to pay the \$870.00 that was due on that date.

I find that there is a liquidated damages clause in the tenancy agreement that requires the Tenant to pay \$300.00 to the Landlord if the Tenant ends the tenancy prior to the end of the fixed term of the tenancy. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

The amount of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$300.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally liquidated damage clauses will only be struck down when they are oppressive to the party having to pay the stipulated sum, which I do not find to be the case in these circumstances. On this basis, I find that the Landlord is entitled to collect liquidated damages of \$300.00. As the Landlord is only seeking \$150.00 for liquidated damages, I grant the full amount of that claim.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to clean the carpets and drapes at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the carpets and drapes, which was \$264.40.

On the basis of the undisputed evidence I find that the Tenant failed to return a laundry card at the end of the tenancy. As the Tenant agreed to pay \$50.00 if she failed to return the card, I find that she owes the Landlord \$50.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$1,384.40, which includes \$870.00 in rent for August of 2015, \$264.40 for cleaning, \$150.00 in liquidated damages, \$50.00 for a laundry card, and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act* I authorize

the Landlord to retain the security/key deposits of \$370.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,014.40. In the event that the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 22, 2016

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Residential Tenancy Branch